

Arrow Molded Plastics, Inc. and Local 146, United Food and Commercial Workers International Union, AFL-CIO. Cases 8-CA-11476 and 8-RC-11096

December 16, 1982

ORDER REMANDING PROCEEDING TO THE REGIONAL DIRECTOR AND DIRECTION OF SECOND ELECTION

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On August 8, 1979, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding,¹ finding that Respondent violated Section 8(a)(1) and (5) of the Act, and ordering Respondent to cease and desist therefrom and to take certain affirmative action to remedy the unfair labor practices, including, *inter alia*, upon request, bargaining with the Union as the exclusive representative of the employees in the appropriate unit. With respect to Case 8-RC-11096, the Board sustained certain objections; set aside the results of the election held on October 21, 1977; and ordered that the petition in Case 8-RC-11096 be dismissed.

On July 13, 1981, the United States Court of Appeals for the Sixth Circuit issued a decision² in which the court agreed with the Board that Respondent had violated Section 8(a)(1) of the Act by soliciting employee grievances, granting and withholding benefits in order to discourage union activity, and maintaining an unlawfully broad no-distribution rule during the organizational campaign.³ It

refused, however, to enforce the Board's bargaining order because Respondent's conduct "fell far short of actual or threatened antiunion plant closures, disciplinary discharges, and employee surveillance which characterizes [sic] the cases in which this Court has enforced bargaining orders." The court also found that "the passage of time since the first election militates in favor of a rerun election."

By letter dated September 1, 1982, the parties were advised that, in light of the court's denial of enforcement of the bargaining order, the Board was considering the direction of a new election, and that all parties were invited to file statements of position. The Union and the Employer, respectively, filed statements of position.

The Board, having duly considered the matter, accepts the court's opinion as the law in Case 8-CA-11476. With respect to Case 8-RC-11096, the Board, having found that the Employer engaged in unlawful conduct that interfered with the employees' free choice in the election held on October 21, 1977, finds that a second election is appropriate.⁴ Accordingly,

It is hereby ordered that the petition in Case 8-RC-11096 be, and it hereby is, reinstated, and that Case 8-RC-11096 be, and it hereby is, remanded to the Regional Director for Region 8 to conduct the second election directed below.

[Direction of Second Election and *Excelsior* footnote omitted from publication.]

¹ 243 NLRB 1211.

² 653 F.2d 280.

³ These violations involved the same conduct that the Board found objectionable in Case 8-RC-11096.

⁴ In its statement of position, the Employer contends, *inter alia*, that the Board is estopped from considering a rerun election because since more than 14 months have elapsed since the court entered its decision and more than 10 months have elapsed since the Regional Director sent all parties to the proceeding a letter indicating that the file had been closed. The Employer, however, has not shown that it was prejudiced by the delay. Nor has it presented any other sufficient basis for not holding the election. Therefore, we shall direct a second election as requested by the Union.